

CONFIDENTIAL SECTION INCLUDED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLES DEMPSEY, individually, and L.D. by her
father and natural guardian, CHARLES DEMPSEY,

Plaintiffs,

Index No. 19-cv-6780 (EAW)

v.

THE CITY OF ROCHESTER, a municipal
entity, JAVIER ALGARIN, ADAM GORMAN,
"JOHN DOE" RPD OFFICER RESPONSIBLE
FOR TRAINING JAVIER ALGARIN,

Defendants.

Video-recorded Deposition Upon Oral Examination of:

Officer Javier Algarin

Location: Powers Building
16 West Main Street, 7th Floor
Rochester, New York 14614

Date: July 15, 2022

Time: 9:00 a.m.

Reported By: KIMBERLY A. BONSIGNORE
Alliance Court Reporting, Inc.
109 South Union Street, Suite 400
Rochester, New York 14607



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A P P E A R A N C E S

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Also Present:

Ben Parrow, Videographer
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277 North Goodman Street, Apartment 407
Rochester, New York 14607

* * *



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S T I P U L A T I O N S

FRIDAY, JULY 15, 2022;

(Proceedings in the above-titled matter
commencing at 9:46 a.m.)

* * *

IT IS HEREBY STIPULATED by and between the
attorneys for the respective parties that this
deposition may be taken by the Plaintiff at this time
pursuant to notice;

IT IS FURTHER STIPULATED, that all
objections except as to the form of the questions and
responsiveness of the answers, be reserved until the
time of the trial;

IT IS FURTHER STIPULATED, that pursuant to
Federal Rules of Civil Procedure 30(e)(1) the witness
requests to review the transcript and make any
corrections to same before any Notary Public;

IT IS FURTHER STIPULATED, that if the
original deposition has not been duly signed by the
witness and returned to the attorney taking the
deposition by the time of trial or any hearing in this
cause, a certified transcript of the deposition may be
used as though it were the original;

IT IS FURTHER STIPULATED, that the
attorneys for the parties are individually responsible



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2 for their certified transcript charge, including any
3 expedite or other related production charges;

4 AND IT IS FURTHER STIPULATED, that the
5 Notary Public, KIMBERLY A. BONSIGNORE, may administer
6 the oath to the witness.

7 * * *

8 THE VIDEOGRAPHER: I'm going on the
9 record.

10 This is the case of Charles Dempsey
11 against the City of Rochester et al., Case No.
12 19-cv-6780. Today's date is July 15, 2022. The time
13 is 9:46 a.m.

14 My name is Ben Parrow with Studio 80 ROC
15 at 277 North Goodman Street, Apartment 407, Rochester,
16 New York 14607. I am the videographer.

17 MR. SHIELDS: And for the plaintiff, my
18 name is Elliot Shields of Roth & Roth, LLP. The
19 address is 192 Lexington Avenue, Suite 802, New York,
20 New York 10016.

21 MS. JONES: For the defendants, I'm
22 Peachie Jones with the City of Rochester Law
23 Department, 300 Church Street, Rochester, New York
24 14614. And my client here is...

25 OFFICER ALGARIN: Officer Javier Algarin.



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1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS
2 right?

3 MS. JONES: Objection.

4 A. Yes.

5 Q. Okay. And did you see them jump the
6 fence?

7 A. No.

8 Q. And you didn't see them jump the fence
9 because you didn't chase them; is that right?

10 MS. JONES: Objection.

11 A. No. I gave chase when I arrived at the
12 backyard. I peered over the fence, which I saw
13 somebody that was running from 61 Kosciusko, running
14 behind the fence going westbound.

15 Q. So when you got out of your car, you ran?

16 A. Correct.

17 Q. And you ran into the backyard of 61
18 Kosciusko Street?

19 MS. JONES: Objection.

20 A. Down the driveway of 61 Kosciusko Street.

21 Q. Okay. And you did not immediately jump
22 the fence; is that right?

23 MS. JONES: Objection.

24 A. Immediately? Can you define
25 "immediately"?



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1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 Q. When you got to the back of 61 Kosciusko
3 Street, the first thing you said was that you peered
4 over the fence; is that right?

5 A. Yes.

6 Q. After you peered over the fence, did you
7 then remain in the backyard of 61 Kosciusko Street for
8 a period of time?

9 A. No.

10 Q. After you peered over the fence in the
11 backyard of Kosciusko Street, you then jumped into the
12 backyard of 57 Kosciusko Street?

13 A. Correct.

14 Q. Okay. And then when you were in the back
15 of 57 Kosciusko Street, you could see that both of the
16 suspects had been detained; correct?

17 MS. JONES: Objection.

18 A. Correct.

19 Q. And after you jumped into the backyard of
20 57 Kosciusko Street, you searched the backyard of 57
21 Kosciusko Street; correct?

22 MS. JONES: Objection.

23 A. Correct.

24 Q. And you were looking for a gun; correct?

25 MS. JONES: Objection.



1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 A. Looking for tossed contraband.

3 Q. And when you say "contraband," that would
4 include a gun or drugs or some other illegal thing;
5 correct?

6 MS. JONES: Objection.

7 A. Correct.

8 Q. And at the time, you said you were
9 looking -- so can you tell me specifically what you
10 were looking for at the time?

11 A. Any sort of contraband.

12 Q. What did you suspect that these people may
13 have discarded as a result of them running from you?

14 A. I wouldn't know.

15 Q. But you had responded for a call of drug
16 activity; correct?

17 A. Correct.

18 Q. So it's fair to say that you may have been
19 looking for drugs; right?

20 MS. JONES: Objection.

21 A. Any illegal contraband.

22 Q. And at the time that you were in the
23 backyard of 57 Kosciusko Street after you had jumped
24 the fence from 61 Kosciusko Street, you weren't
25 running, right, you were just walking around the yard?



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1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 MS. JONES: Objection.

3 A. Can you repeat the question?

4 Q. Yeah, it was a bad question.

5 At the time, when you first jumped from
6 the fence in the backyard of 61 Kosciusko Street to
7 the backyard of 57 Kosciusko Street, you weren't
8 chasing anyone; correct?

9 MS. JONES: Objection.

10 A. Only until I confirmed that both suspects
11 were in custody.

12 Q. I've asked you this, but just to confirm,
13 after you jumped the fence into 57 Kosciusko Street,
14 you had confirmed that both suspects were in custody;
15 correct?

16 A. Only after.

17 Q. After you jumped the fence?

18 A. Correct.

19 Q. So after you jumped the fence, you walked
20 around the backyard of 57 Kosciusko Street and you
21 looked for contraband; correct?

22 MS. JONES: Objection.

23 A. Only after confirming that they were in
24 custody did I search some sort of flight that the
25 suspects had for any contraband that they may have



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2 tossed.

3 Q. In the backyard of 57 Kosciusko Street?

4 A. Correct.

5 Q. And that flight had concluded by the time
6 that you jumped into the backyard of 57 Kosciusko
7 Street from the backyard of 61 Kosciusko Street;
8 correct?

9 MS. JONES: Objection.

10 A. Their flight? The suspects' flight?

11 Q. Correct.

12 A. As soon as I confirmed it, I'm not sure as
13 to what point, but I arrived at 57, then realized that
14 they were in custody.

15 Q. Okay. And you looked around, you searched
16 the backyard of 57 Kosciusko Street, and you did not
17 find any contraband; correct?

18 MS. JONES: Objection.

19 A. I searched what was a possible flight path
20 for the suspects. In only the brief time I was able
21 to, I was unable to find any contraband and could not
22 complete my search.

23 Q. And why could you not complete your
24 search?

25 A. Because that is when Charles Dempsey and



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2 his dog came to the backyard.

3 Q. Okay. So I'm not talking about that time.

4 A. Uh-huh.

5 Q. Okay? We'll ask about that in a little
6 bit.

7 The first time that you jumped the fence
8 from 61 Kosciusko Street into the backyard of 57
9 Kosciusko Street --

10 A. Uh-huh.

11 Q. -- that's the first time you entered the
12 backyard of 57 Kosciusko Street; correct?

13 A. Correct.

14 Q. And at that time, you searched around the
15 backyard for a little bit; correct?

16 A. In their flight path, correct.

17 Q. And then you went to the back fence and
18 you spoke with Officer Horowitz, who was in the yard
19 on Sobieski Street; correct?

20 A. Correct.

21 Q. And you asked him where did he throw a
22 gun; correct?

23 MS. JONES: Objection.

24 A. I asked him about a gun, correct.

25 Q. And what did he say in response to you?



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2 A. That he did not have a gun.

3 Q. Now, was that Officer Horowitz or was that
4 the suspect that he had stopped?

5 A. The suspect.

6 Q. So the suspect told you he didn't have a
7 gun, and then you looked around the yard for a little
8 longer?

9 MS. JONES: Objection.

10 A. Nope. Went straight to Officer Gorman to
11 ensure that he was fine with his suspect that he had
12 in custody.

13 Q. Okay. And you were present in the
14 backyard of 57 Kosciusko Street the first time, before
15 you joined Officer Gorman, for approximately a minute
16 and 10 seconds. Is that fair to say?

17 MS. JONES: Objection.

18 A. Can you repeat that?

19 Q. You were present in the backyard at 57
20 Kosciusko Street before you jumped the fence into the
21 backyard of 49 Kosciusko Street for approximately a
22 minute and 10 seconds; is that correct?

23 MS. JONES: Objection.

24 A. The house -- one house west of 57
25 Kosciusko Street, yes.



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2 Q. And one house west of Kosciusko Street,
3 that's the yard where Officer Gorman had apprehended
4 the suspect who was wearing a red sweatshirt; correct?

5 A. That's where he had the suspect. As to
6 what color his sweatshirt is, I can't tell you --
7 remember.

8 Q. But the one yard west is where Officer
9 Gorman was present with one of the suspects that he
10 had apprehended; correct?

11 A. Correct.

12 Q. And you asked Officer Gorman where they
13 had discarded a gun when you were in the backyard of
14 57 Kosciusko Street the first time; correct?

15 MS. JONES: Objection.

16 A. I do not remember what our conversation
17 entailed. It was more -- he directed me to the flight
18 path of where the suspect ran through that yard, 57
19 Kosciusko Street.

20 Q. I'm sorry. Did I say "Gorman"? If I said
21 Gorman, I meant to say Horowitz. So let me ask you a
22 new question.

23 When you were in the backyard of 57
24 Kosciusko Street and you spoke to Officer Horowitz,
25 you asked him where he threw a gun; correct?



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2 A. No. I asked the suspect.

3 Q. Okay. You asked the suspect.

4 And you assumed that he had a gun because
5 they ran from you?

6 MS. JONES: Objection.

7 A. It was more to make sure that they didn't
8 leave a gun somewhere.

9 Q. And he responded that he didn't have a
10 gun; correct?

11 A. Correct.

12 MR. SHIELDS: Give me one second.

13 I may have been saying the wrong
14 addresses.

15 Oh, did you pause that? We weren't off
16 the record. You can put it back on.

17 THE VIDEOGRAPHER: No. It just timed out
18 on me. It's back on.

19 MR. SHIELDS: And just for the written
20 record --

21 THE VIDEOGRAPHER: The camera timed out
22 after 30 minutes of continuous recording.

23 MR. SHIELDS: Okay. So are you going to
24 have to kind of --

25 THE VIDEOGRAPHER: 30 minutes, probably.



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2 MR. SHIELDS: -- press the -- maybe you
3 can set a timer for like 28 minutes.

4 THE VIDEOGRAPHER: I can see it right on
5 there.

6 MR. SHIELDS: Okay.

7 THE VIDEOGRAPHER: I apologize.

8 MR. SHIELDS: Okay. And just for the
9 record, all of these prior questions that I was asking
10 about the backyard of 57 Kosciusko Street, what I
11 meant was -- actually, let me pause before I say this.
12 Let me just make sure I have this correct. I'm sorry.

13 MS. JONES: Kim, can I ask you a question
14 while he's looking? Are you certifying to the
15 authenticity of the video recording?

16 MR. SHIELDS: We don't need a
17 certification for the authenticity of the video
18 recording because we have a written stenographer who
19 is making the official written record of the
20 deposition. But we can work that out later.

21 MS. JONES: Thank you, Elliot.

22 Kim, are you certifying to the
23 authenticity of the video recording?

24 You're shaking your head no. Okay. I
25 just wanted to ask. Thank you.



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2 MR. SHIELDS: Okay. And so I figured out
3 the answer to my question. So all of the prior times
4 that I was talking about my client's backyard, the
5 proper address should have been 53 Kosciusko Street,
6 not 57 Kosciusko Street.

7 So just for the record, all of the prior
8 questions up to this point we should change the
9 address from 57 Kosciusko Street -- all the times that
10 I said 61 Kosciusko Street, it should be 57 Kosciusko
11 Street. All the times that I said 57 Kosciusko
12 Street, it should be 53 Kosciusko Street. So I'm just
13 going to ask some questions to clarify that.

14 MS. JONES: Can you say that one more
15 time? So every time you said 61, it should have been
16 which number?

17 MR. SHIELDS: 57.

18 MS. JONES: 57.

19 And every time you said 57, it should have
20 been 53?

21 MR. SHIELDS: Correct.

22 Q. And I'm just going to ask a couple of
23 questions, Officer Algarin, to clarify that.

24 So to be clear, on the date of the
25 incident, you said that the suspects ran down the



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2 driveway of 61 Kosciusko Street; is that correct?

3 A. Correct.

4 Q. And then they entered the backyard of 57
5 Kosciusko Street; is that correct?

6 MS. JONES: Objection.

7 A. No. 53. Directly into 53.

8 Q. Do you remember if 53 Kosciusko Street
9 had -- was surrounded by a wooden fence or something
10 else?

11 A. 53 Kosciusko Street only had a wooden
12 fence on the east side of the perimeter. The rest was
13 chain-link.

14 Q. So you're saying that the driveway from 61
15 Kosciusko Street had direct access into the backyard
16 of 53 Kosciusko Street?

17 A. I do not remember.

18 Q. Now -- so you chased them down the
19 backyard of -- I'm sorry -- down the driveway of 61
20 Kosciusko Street. That's what you said; right?

21 A. Yes.

22 Q. And then they entered a backyard; right?

23 A. Now I'm getting confused with all these
24 number changes.

25 Q. The yard that the suspects ran into, that



1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 is the first yard that you entered; correct?

3 A. Correct.

4 Q. And then you said that you peered over a
5 wooden fence; correct?

6 A. Correct, that looks over 53 Kosciusko
7 Street.

8 Q. So the fence that you looked over looked
9 over into 53 Kosciusko Street; correct?

10 A. Correct.

11 Q. And then you jumped over the fence from
12 the yard that I'll represent to you is 57 Kosciusko
13 Street into the yard that was 53 Kosciusko Street?

14 A. Yes.

15 Q. Okay. So it would be fair to say that the
16 suspects ran down a driveway into the backyard of 57
17 Kosciusko Street; correct?

18 A. Correct.

19 Q. Okay. And then you jumped the fence into
20 the backyard of 53 Kosciusko Street; correct?

21 A. Correct.

22 Q. And then you searched the yard of 53
23 Kosciusko Street for some period of time; correct?

24 A. Just the flight path of the suspects that
25 they had taken, 53 Kosciusko Street.



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2 Q. Okay. And when you jumped into the
3 backyard of 53 Kosciusko Street, Officer Gorman had
4 one suspect detained in the yard directly to the west
5 of Kosciusko Street; correct?

6 MS. JONES: Objection.

7 A. Officer Gorman?

8 Q. Correct.

9 A. Yes.

10 Q. And Officer Horowitz had the other suspect
11 detained in the yard on Sobieski Street; correct?

12 A. To the south of 53 Kosciusko Street,
13 correct.

14 Q. And that yard to the south would have been
15 a yard off of Sobieski Street; correct?

16 A. Correct.

17 Q. Okay. And so you were present in the
18 backyard of 53 Kosciusko Street the first time for
19 approximately one minute. Is that accurate --

20 MS. JONES: Objection.

21 Q. -- to your recollection?

22 A. Do not remember specifically --

23 Q. Okay.

24 A. -- how long.

25 Q. Long enough to walk around, search the



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2 flight path that you believed the suspects ran
3 through, and have a short conversation with the
4 suspect that Officer Horowitz had detained; correct?

5 A. Correct.

6 Q. Did you do anything else while you were in
7 the backyard of 53 Kosciusko Street the first time?

8 A. Walked over to Officer Gorman.

9 Q. Okay. So you walked over to Officer
10 Gorman and you jumped the fence from 53 Kosciusko
11 Street into the yard directly to the west of 53
12 Kosciusko Street; correct?

13 A. Correct.

14 Q. And --

15 MS. JONES: One piece of clarification on
16 these numbers. You weren't asking him to change the
17 numbers in your prior questioning, we're just going to
18 leave the note in there that 61 should be 57 and 57
19 should be 53?

20 MR. SHIELDS: Correct. And that's why I
21 asked the questions over again, basically.

22 MS. JONES: I just wanted to clarify that
23 the record wasn't changing before.

24 Q. After you jumped into the backyard of 49
25 Kosciusko Street where Officer Gorman was, what did



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2 you do?

3 A. Sorry. Let them go by.

4 I spoke with Officer Gorman briefly to see
5 if the suspect had any contraband on him and as to
6 what his flight were. Officer Gorman told me as to
7 what the flight path was.

8 Q. And did you look around in the backyard of
9 49 Kosciusko Street at all?

10 A. Just from my walk from the fence to
11 Gorman, to Gorman to the fence.

12 Q. And the backyard at 49 Kosciusko Street
13 had a big dog cage in it; is that right?

14 A. Correct.

15 Q. And what would you have done if a dog had
16 run out at you in the backyard of 49 Kosciusko Street?

17 MS. JONES: Objection.

18 A. It depends on the situation.

19 Q. You might have shot the dog if it ran at
20 you?

21 MS. JONES: Objection.

22 A. No. It depends on that dog's demeanor,
23 aggressiveness, flight path, speed, size.

24 Q. We'll get back to that later.

25 When you were in the backyard of 49



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2 Kosciusko Street, Officer Gorman told you to backtrack
3 through the flight path in 53 Kosciusko Street;
4 correct?

5 MS. JONES: Objection.

6 A. He pointed out a flight path of the
7 suspect, so that was a good starting point to
8 backtrack.

9 Q. And he told you you should backtrack;
10 correct?

11 MS. JONES: Objection.

12 A. Yes.

13 Q. And then you pulled up a small picnic
14 table, and then you jumped over the fence into the
15 backyard of 53 Kosciusko Street; correct?

16 A. I used the picnic table to assist myself
17 over the fence, yes.

18 Q. What was going through your head at the
19 exact moment that you jumped the fence?

20 A. Do not remember.

21 Q. Were you thinking about anything at the
22 moment that you jumped the fence?

23 A. Just searching for contraband.

24 Q. Did you think about the fact that you had
25 already searched the yard?



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2 have probable cause; correct?

3 MS. JONES: Objection.

4 A. Sure.

5 Q. By "sure," you mean, yes, you must have
6 probable cause as part of the exigent circumstances
7 test; correct?

8 A. Yes.

9 Q. And you also must have an emergency
10 situation; correct?

11 MS. JONES: Objection.

12 A. No.

13 Q. So part of ex --

14 A. Can you define your emergency situation?

15 Q. Sure. Emergency would generally mean that
16 there was an urgent need to either render aid or take
17 action.

18 A. Yes.

19 Q. So, yes, exigent circumstances require
20 both probable cause and an emergency; correct?

21 A. Yes.

22 Q. And an emergency could be something like
23 someone's life is in danger; correct?

24 A. Yes.

25 Q. Like if you heard someone screaming for



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2 help?

3 A. Yes.

4 Q. Or if you saw them being attacked?

5 A. Yes.

6 Q. Those are situations where there would be
7 an emergency?

8 A. Correct.

9 Q. So you could reasonably enter someone's
10 property without a warrant or consent if you believe
11 their life was in danger; correct?

12 A. Yes.

13 Q. And can we agree if there was no
14 emergency, then a warrantless entry to search for
15 weapons or contraband is not allowed; correct?

16 MS. JONES: Objection.

17 A. No.

18 Q. No, the warrantless entry is not allowed;
19 correct?

20 MS. JONES: Objection.

21 A. No, that's not what I meant. I'm saying
22 "no" to your statement.

23 Q. So you're saying you're allowed to enter a
24 property to search for contraband or weapons even if
25 there's no emergency?



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2 A. No, I didn't say for weapons or
3 contraband.

4 Q. Are you allowed to enter someone's
5 property to search for weapons or contraband if
6 there's no emergency, if you don't have consent or a
7 warrant?

8 A. No.

9 Q. So if you don't have consent or a warrant,
10 there must be an emergency for you to enter someone's
11 property to search for weapons or contraband; correct?

12 MS. JONES: Objection.

13 A. I'm really stuck on the drugs-and-weapons
14 thing that you keep putting out there, but no.

15 Q. Can you explain what you mean by "no"?

16 A. It all depends on the situation.

17 Q. And we agree that for exigent
18 circumstances to apply you must have probable cause
19 and an emergency; right?

20 A. Correct.

21 Q. So if there's no emergency, then there's
22 no exigent circumstances; correct?

23 MS. JONES: Objection.

24 A. I feel like we're going around in circles.
25 Can you say your question one more time?



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1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 Q. We can agree that if there's no emergency,
3 then a warrantless entry to search for weapons or
4 contraband is not allowed; correct?

5 A. Correct.

6 Q. Even if there's probable cause to believe
7 that there's weapons or contraband on the property, if
8 there's no emergency, you're not allowed to enter the
9 property; correct?

10 MS. JONES: Objection.

11 A. Correct.

12 Q. And we can agree if there's no emergency,
13 then the warrantless entry is unlawful even if a
14 felony has been committed; correct?

15 MS. JONES: Objection.

16 A. What is that felony?

17 Q. It doesn't matter what the felony is. If
18 there's no emergency, you're not allowed --

19 A. There's an emergency.

20 Q. -- you're not allowed to enter the
21 property; correct?

22 MS. JONES: Objection.

23 A. And your emergency is only that somebody's
24 in danger?

25 Q. Any emergency. There's got to be an



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2 emergency in order for you to lawfully enter the
3 property without a warrant or consent; correct?

4 A. No.

5 Q. So you can enter a property without a
6 warrant or consent even if there's not an emergency?

7 A. To make sure there's no one else in the
8 home, correct.

9 Q. So you're saying in certain circumstances
10 if you need to make sure there's not someone in a
11 house, you can enter a property?

12 A. If the house is supposed to be empty and
13 we're supposed to hold for a warrant, however, we
14 believe there's somebody still inside the home,
15 clearing the home to make sure that nobody else is in
16 there, not necessarily searching for weapons or
17 contraband, yes.

18 Q. So under certain circumstances without a
19 warrant or consent, you can still enter a home even if
20 there's not an emergency?

21 A. Correct.

22 Q. Are there certain circumstances where you
23 can enter a property without a warrant or consent if
24 you don't have probable cause?

25 A. Define "property." What is the property?



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2 Q. A residential property.

3 A. A house with a fenced-in area? Are we
4 talking about woods? Open field?

5 Q. Someone's home --

6 A. Okay.

7 Q. -- and/or the curtilage to their home.

8 A. Okay. No.

9 Q. A mere suspicion that contraband is
10 present on the property does not on its own create an
11 urgency, justifying a warrantless entry onto the
12 property; correct?

13 MS. JONES: Objection.

14 A. In that isolated what you just said, yes.

15 Q. Because suspicion is less than probable
16 cause; correct?

17 A. Correct.

18 Q. So the mere possibility that contraband
19 could be removed or destroyed does not create urgency,
20 justifying a warrantless entry onto a property;
21 correct?

22 MS. JONES: Objection.

23 A. It depends on the situation and exigent
24 circumstances.

25 Q. We're talking about exigent circumstances



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2 here. "Urgency" means emergency. So if there's no
3 emergency, you can't enter a property; correct?

4 MS. JONES: Objection.

5 A. I think we just discussed that.

6 Q. Okay. So my question is: The mere
7 possibility, the hypothetical possibility --

8 A. Uh-huh.

9 Q. -- that contraband could be removed or
10 destroyed does not create an emergency; correct?

11 A. Not in itself, no.

12 Q. So the mere possibility that contraband
13 can be removed or destroyed does not create an
14 emergency that would justify a warrantless entry onto
15 property; correct?

16 MS. JONES: Objection.

17 A. Correct.

18 THE VIDEOGRAPHER: I'm coming up on that
19 30 minutes. I'm just going to reset it now.

20 THE WITNESS: Now is a good time to take a
21 break?

22 MR. SHIELDS: Sure.

23 So we're off the record.

24 (The proceeding recessed at 10:45 a.m.)

25 (The proceeding reconvened at 10:48 a.m.;



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2 detainee.

3 Q. And in that video, the suspect that
4 Officer Horowitz had detained in fact told you he did
5 not have a gun; correct?

6 A. Correct.

7 Q. And when you were searching the yard as
8 depicted in that first 1 minute and 12 seconds of the
9 video, you didn't find a gun or any other contraband;
10 correct?

11 A. In that very brief moment in the yard, no.

12 Q. And the entire yard was surrounded by a
13 fence; correct?

14 A. Correct.

15 Q. And the video depicted what you had
16 testified to earlier, that both of the suspects were
17 detained when you were having the conversation with
18 Officer Horowitz; correct?

19 MS. JONES: Objection.

20 A. Say it again.

21 Q. The video -- the portion of the video that
22 we just watched depicted that both of the suspects had
23 been detained by Officer Horowitz and Officer Gorman
24 at the time that you were leaning on the fence and
25 having the conversation with Officer Gorman and his



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2 suspect about the gun; correct?

3 MS. JONES: Objection.

4 A. Officer Horowitz about the gun and his
5 suspect.

6 Q. And at that time -- what I'm just getting
7 at is both of those suspects were detained. They were
8 no longer running or fleeing; correct?

9 A. Correct.

10 Q. And Officer Horowitz found marijuana on
11 the suspect that he detained; correct?

12 A. Correct.

13 MR. SHIELDS: Okay. And now I'm going to
14 play the video again. Okay? And we are beginning the
15 video at the same spot where we had paused it, 1
16 minute and 12 seconds into the video, which is 17
17 hours, 8 minutes, and 30 seconds on the bottom
18 right-hand corner.

19 (At this time the video was played.)

20 MR. SHIELDS: And I'm pausing the video
21 now at 2 minutes and 12 seconds into the video, and
22 that is also 17 hours, 9 minutes, and 29 seconds on
23 the bottom right.

24 Q. Is that accurate, Officer Algarin?

25 A. Correct.



1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 Q. And previously, when I had begun playing
3 the video, it was at 1 minute and 12 seconds into the
4 video; is that right?

5 A. Correct.

6 Q. And that depicted you jumping into the
7 backyard at 49 Kosciusko Street, where Officer Gorman
8 was; correct?

9 A. Correct.

10 Q. So you were in the backyard of 49
11 Kosciusko Street for approximately one minute;
12 correct?

13 A. Correct.

14 Q. And we agreed earlier that it would have
15 taken about 15 to 20 seconds to walk to the front door
16 of Mr. Dempsey's house; correct?

17 MS. JONES: Objection.

18 A. Correct.

19 Q. So in the one minute that you were in the
20 backyard of 49 Kosciusko Street, you could have in a
21 shorter amount of time walked to the front door and
22 knocked on Mr. Dempsey's door and asked for his
23 consent to enter his yard; correct?

24 MS. JONES: Objection.

25 A. Correct.



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2 Q. Does watching the video refresh your
3 recollection at all about what was going through your
4 head at the exact moment that you jumped the fence and
5 entered Mr. Dempsey's yard?

6 A. Same as I stated before.

7 Q. And you stated before that you weren't
8 thinking about anything; correct?

9 MS. JONES: Objection.

10 A. Finding contraband.

11 Q. And --

12 A. And always thinking about rules.

13 Q. I'm sorry. Can you repeat the last thing
14 you just said?

15 A. When we had the conversation, it was about
16 rules, and we had that whole thing about rules and
17 always thinking about following the rules, and then
18 finding contraband.

19 Q. At the exact moment that you jumped the
20 fence, are you saying that you were thinking about any
21 specific rule?

22 MS. JONES: Objection.

23 A. No.

24 Q. At the exact moment that you jumped the
25 fence, you were not thinking about any specific rule?



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2 A. No.

3 Q. And we agreed before that the first time
4 you were in Mr. Dempsey's yard for approximately a
5 minute and 10 seconds you didn't not find a gun or
6 contraband; correct?

7 A. Correct.

8 Q. And from the neighboring yard, 49
9 Kosciusko Street, you could see over the fence into
10 the backyard; correct?

11 A. Say that one more time.

12 Q. From the neighboring yard where Officer
13 Gorman was, 49 Kosciusko Street, you could see over
14 the fence into the backyard of 53 Kosciusko Street;
15 correct?

16 A. Correct.

17 MS. JONES: One second. Do you need to
18 move back over since the sun has moved? I mean, you
19 don't have to. I'm just -- because I hate being in
20 the sun. Sorry. If that's better. Do what you want.

21 MR. SHIELDS: Is that better light for
22 you, Ben?

23 THE VIDEOGRAPHER: Yes. Give me one
24 second.

25 MS. JONES: And I'm keeping him on his



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2 toes.

3 THE VIDEOGRAPHER: I'm good there. Thank
4 you.

5 Q. And prior to jumping the fence from 49
6 Kosciusko Street into the yard at 53 Kosciusko Street,
7 you did not observe a gun or any contraband on the
8 ground by looking over the fence; correct?

9 A. Correct.

10 Q. And prior to entering the yard from 49
11 Kosciusko Street into 53 Kosciusko Street, you did not
12 ask the suspect if he discarded any contraband in that
13 yard; correct?

14 MS. JONES: Objection.

15 A. Correct.

16 Q. And you never saw the suspect discard any
17 contraband on the property; correct?

18 MS. JONES: Objection.

19 A. Correct.

20 Q. And Gorman didn't tell you that he had
21 seen the suspect discard any contraband in the yard at
22 53 Kosciusko Street; correct?

23 MS. JONES: Objection.

24 A. Correct.

25 Q. Gorman simply told you to backtrack



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2 through the yard, and then you immediately jumped the
3 fence; correct?

4 MS. JONES: Objection.

5 A. Correct.

6 Q. And you had no facts to support a
7 reasonable belief that the suspect had discarded a gun
8 in that yard; correct?

9 MS. JONES: Objection.

10 A. Looking for contraband, not specifically a
11 gun.

12 Q. Listen to my question and answer my
13 question, please. You had no facts to support a
14 reasonable belief that the suspect had discarded a gun
15 in the yard; correct?

16 MS. JONES: Objection.

17 A. Specifically a gun, no.

18 Q. And you had no facts to support a
19 reasonable belief that the suspect had discarded any
20 drugs in the yard; correct?

21 MS. JONES: Objection.

22 A. Other than that Officer Horowitz's
23 detainee had drugs on him.

24 Q. So the answer is, no, you had no specific
25 facts to support a reasonable belief that the suspect



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2 had discarded guns -- or drugs in that yard; correct?

3 MS. JONES: Objection.

4 A. Correct.

5 Q. And do you accept responsibility for
6 entering Mr. Dempsey's backyard without a warrant?

7 MS. JONES: Objection.

8 A. Correct.

9 Q. So, yes, you do accept responsibility for
10 entering Mr. Dempsey's yard without a warrant?

11 MS. JONES: Objection.

12 A. Correct.

13 Q. And do you accept responsibility for
14 entering Mr. Dempsey's backyard without his
15 permission?

16 A. Correct.

17 Q. And earlier we agreed that you could have
18 walked to his front door, and it would have only taken
19 15 to 20 seconds, and you could have asked his
20 permission to enter his yard; correct?

21 MS. JONES: Objection.

22 A. Correct.

23 Q. And earlier you agreed that that's
24 important so that you could let him know what was
25 going on in his backyard; correct?



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2 MS. JONES: Objection.

3 A. That was the theoretical setting, not
4 necessarily pertaining to Mr. Dempsey.

5 Q. Here it would have been important to go
6 knock on his front door to tell him what was going on
7 in his backyard; correct?

8 A. Correct.

9 Q. And would you agree that if there's one
10 more -- more than one choice, it's always best to make
11 the safest choice?

12 MS. JONES: Objection.

13 A. No.

14 Q. Okay. When are you allowed to make an
15 unsafe choice?

16 A. When I have to save someone's life.

17 Q. Okay. Other than instances where you have
18 to save someone's life, would you agree that if
19 there's more than one choice, it's always best to make
20 the safest choice?

21 MS. JONES: Objection.

22 A. Correct.

23 Q. Earlier you said that you made a plan with
24 Officers DiSabatino, Gorman, and Horowitz; right?

25 A. Correct.



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2 Q. And that plan was that you believed the
3 suspects would run through the backyards of Kosciusko
4 Street, into the yards of Sobieski Street?

5 A. Correct.

6 Q. And have you devised similar plans in the
7 past before this incident?

8 A. I don't remember.

9 Q. So you might have, but you don't remember?

10 A. I do not remember.

11 Q. And is that a common police tactic?

12 A. Which part?

13 Q. Is it a common police tactic to make a
14 plan with other officers to detain suspects?

15 A. Yes.

16 Q. And is it a common plan with other -- I'm
17 sorry. Withdrawn.

18 Is it a common tactic to make a plan with
19 other officers where you expect suspects to run and to
20 station officers in a location to detain them?

21 A. Yes.

22 Q. Is it common to chase suspects through
23 people's yards?

24 A. Yes.

25 Q. How often during a typical week would you



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2 say you chase suspects through people's yards?

3 A. Possibly once a week.

4 Q. And you said possibly. So sometimes more?

5 A. Yes.

6 Q. And when is the last time that you chased
7 a suspect through someone's yard?

8 A. Saturday night.

9 Q. Tell me about that incident.

10 MS. JONES: Objection.

11 A. Individuals were in Greece, the Town of
12 Greece. They're armed with a handgun. They
13 approached an elderly couple with this gun. They
14 pistol-whipped them, assaulted them. A neighbor
15 attempted to intervene. Those individuals then
16 assaulted him.

17 After the assault, those same individuals
18 went to the elderly couple's home. Within that home,
19 they did take their personal belongings. One of them
20 car keys. And then after taking the car keys, they
21 proceeded to take the car, which is a white Buick
22 Encore.

23 Later on that night, myself and my partner
24 found that Encore. The Encore came to a stop. One of
25 the occupants proceeded to flee from that vehicle



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2 which had led officers to several backyards.

3 Q. So you chased them through those
4 backyards?

5 MS. JONES: Objection.

6 A. Chased the one through those backyards,
7 correct.

8 Q. And you detained and arrested that person?

9 A. No.

10 Q. They were able to get away?

11 A. Yes.

12 Q. Did you have to jump any fences when you
13 chased them through those yards?

14 A. Yes.

15 Q. Did you see any dogs when you went through
16 those backyards?

17 A. No.

18 Q. Have you previously encountered dogs in
19 other situations when you went through people's
20 backyards?

21 A. Yes.

22 Q. Or front yards?

23 A. Yes.

24 THE VIDEOGRAPHER: I'm going to refresh
25 this. Okay?



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2 MR. SHIELDS: Yes.

3 THE VIDEOGRAPHER: Okay.

4 MR. SHIELDS: So now we're good for 30
5 minutes?

6 THE VIDEOGRAPHER: Yeah, we're good. I've
7 got it timed on here.

8 Q. On the date of the incident, as part of
9 the plan that you made, did you consider what you
10 might do if you encountered a dog when you were
11 present in any of the yards?

12 A. No.

13 Q. And you previously stated that, as you've
14 gone through people's yards before, you have
15 encountered dogs; correct?

16 A. Correct.

17 Q. Lots of people in the city of Rochester
18 have dogs; correct?

19 MS. JONES: Objection.

20 A. There's a large amount of dogs in the city
21 of Rochester, yes.

22 Q. And can you estimate the percentage of
23 properties that you would say, in your experience as a
24 police officer, have dogs?

25 MS. JONES: Objection.



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2 A. I don't know for certain. I'd like to say
3 approximately 60, 65 percent.

4 Q. And we agreed earlier that the backyard of
5 49 Kosciusko Street had a big dog cage; right?

6 A. Correct.

7 Q. And so that would indicate that a dog
8 resided at 49 Kosciusko Street; right?

9 MS. JONES: Objection.

10 A. A possibility of there being a dog at 49
11 Kosciusko Street.

12 Q. And, obviously, there was a dog that
13 resided at 53 Kosciusko Street; right?

14 A. Correct.

15 Q. So it's fair to say that if you're in
16 someone's yard, because in your experience 60 to 65
17 percent of the households in Rochester have dogs,
18 you're more likely than not to be in someone's yard
19 that has a dog; correct?

20 MS. JONES: Objection.

21 A. Correct.

22 Q. So that means that it's likely that you'll
23 encounter a dog if you're in someone's yard; correct?

24 MS. JONES: Objection.

25 A. No.



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2 Q. Okay. It's likely that if you enter a
3 yard that a dog might live there; correct?

4 MS. JONES: Objection.

5 A. Correct.

6 Q. So it's possible that you would encounter
7 a dog on that property; correct?

8 MS. JONES: Objection.

9 A. It's possible.

10 Q. So on this day, you knew that it was
11 possible that you might encounter a dog; correct?

12 MS. JONES: Objection.

13 A. Correct.

14 Q. And when a dog sees a stranger, often the
15 dog runs up to that person; correct?

16 MS. JONES: Objection.

17 A. No. It can.

18 Q. Some dogs run up to strangers that they
19 don't know on their property; correct?

20 A. Correct.

21 Q. And that's not necessarily indicative of a
22 dog attacking; correct?

23 MS. JONES: Objection.

24 A. Not always.

25 Q. How many times before this incident had



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2 you encountered a dog during your duties as a police
3 officer?

4 A. Several times.

5 Q. Had you ever previously shot a dog?

6 A. No.

7 Q. Had you ever previously -- withdrawn.

8 Have you ever been attacked by a dog other
9 than -- other than this incident, and not saying that
10 you were attacked in this incident, just at any other
11 time have you been attacked by a dog either as a
12 police officer or as a civilian?

13 MS. JONES: Objection.

14 A. I'm trying to think.

15 Yes, when I was younger, my dog.

16 Q. I'm sorry. I didn't hear everything you
17 said. You said when you were younger, you were
18 attacked by a dog?

19 A. Yeah, my dog.

20 Q. You were attacked by your dog when you
21 were younger?

22 A. Yeah.

23 Q. And were you injured?

24 A. No. Seriously injured, no.

25 Q. And what happened during that attack?



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2 A. He bit me.

3 Q. But you were okay?

4 A. Yes.

5 Q. And how old were you?

6 A. I don't know. Maybe 5.

7 Q. And what did you do to the dog after it
8 bit you?

9 A. Me, nothing.

10 Q. Did your parents or anybody else
11 discipline the dog for biting you?

12 A. I do not know.

13 Q. Did you continue to live with that dog
14 after that incident?

15 A. No.

16 Q. What happened after that incident?

17 A. That, I don't know. It's a question till
18 this day.

19 Q. Was it your family dog?

20 A. Yes.

21 Q. So is it fair to say that your family got
22 rid of that dog after that incident?

23 MS. JONES: Objection.

24 A. That's what I'm assuming happened.

25 Q. All right. So earlier you said that you



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2 didn't make any plan for what you would do if you
3 encountered a dog on that day; correct?

4 A. Correct.

5 Q. And you earlier testified that you had
6 recently finished your academy training; correct?

7 MS. JONES: Objection.

8 A. My field training training.

9 Q. You had recently finished your training;
10 correct?

11 A. Field training.

12 MS. JONES: Objection.

13 Q. And immediately before field training is
14 your academy training; right?

15 A. Correct, in March.

16 Q. So you finished your academy training in
17 March, and then you did your field training from March
18 till -- did you say July?

19 A. Yes.

20 Q. So you recently just had gotten about 13
21 months of training with the RPD. Is that fair to say?

22 MS. JONES: Objection.

23 A. No.

24 Q. How long is your academy training?

25 A. Six months.



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2 Q. Okay. And then field training is four
3 months?

4 A. Correct.

5 Q. So ten months of training?

6 A. Correct.

7 Q. And then after that ten months of
8 training, you've been an officer between July and
9 October; correct?

10 A. Correct.

11 Q. And at the academy, did they train you to
12 make a plan for how to safely interact with a dog when
13 you entered a residential property?

14 A. There was a class, interaction with dogs.

15 Q. How long was that class?

16 A. I don't remember. Possibly half a day.

17 Q. Okay. Tell me everything you remember
18 about that class.

19 A. It was through the Humane Society coming
20 into the classroom, basically, to state what the --
21 what their purpose is, where they're located, how to
22 get in contact with them, what they deal with, and
23 their experiences, what they have dealt with, and
24 their dog interactions of what they do and tactics
25 they might use, what -- where it could be they use a



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2 baton or they use some other instrument.

3 Q. So you were trained to potentially use a
4 baton or some other instrument in part of that
5 training. Is that what you're saying?

6 A. Correct.

7 Q. And do you remember how long that training
8 lasted on that day?

9 A. Half a day. So approximately three, four
10 hours.

11 Q. Okay. And did you -- did they teach you
12 that you could use OC spray or pepper spray with the
13 dog?

14 A. No.

15 Q. Okay. So that wasn't part of that class?

16 A. Not that I remember.

17 Q. Okay. And did you get any handouts when
18 you took that class?

19 A. I don't remember.

20 Q. Do you have any documents in your
21 possession, either at RPD or at home, relating to that
22 class?

23 A. No.

24 Q. At the academy, were you trained that you
25 could shoot a dog if it ran at you when you were on a



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2 residential property?

3 MS. JONES: Objection.

4 A. We were trained to protect ourselves from
5 imminent threat.

6 Q. Okay. And were you taught that if a dog
7 is running at you without anything else that that
8 constitutes an imminent threat?

9 A. No.

10 Q. Okay. What is generally the definition of
11 an "imminent threat"?

12 A. A threat they believe is going to
13 seriously injure and/or kill you.

14 Q. Okay. Are you aware of any officer ever
15 sustaining serious injuries or death as a result of a
16 dog attack?

17 MS. JONES: Objection.

18 A. Officer? No.

19 Q. Were you trained at the academy or during
20 field training that any officer had ever been -- any
21 RPD officer had ever sustained serious injuries or
22 died as a result of a dog attack?

23 A. Not that I'm aware of.

24 Q. Okay. So you were never trained that a
25 dog running at you posed an imminent threat?



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1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 A. Say that again.

3 Q. You were never trained that a dog running
4 at you in and of itself constitutes an imminent
5 threat?

6 MS. JONES: Objection.

7 A. No.

8 Q. As part of your training, were you told
9 that you were allowed to shoot dogs?

10 A. Under circumstances, yes.

11 Q. Those circumstances would be if they posed
12 an imminent threat?

13 A. Correct.

14 Q. But you were also told that there's never
15 been a circumstance in the history of the RPD where a
16 dog had seriously injured or killed an officer;
17 correct?

18 A. Incorrect.

19 MS. JONES: Objection.

20 A. That's not what I said.

21 Q. Okay.

22 A. I said none that I was aware of.

23 Q. Okay. So you don't remember at all, as
24 part of your training, ever learning that a dog had
25 seriously injured or killed an officer; correct?



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2 MS. JONES: Objection.

3 A. Correct, not that I'm aware of. It wasn't
4 specifically stated that no one has ever been injured
5 by a dog in RPD.

6 Q. Were you trained that a dog could pose an
7 imminent threat?

8 A. Yes.

9 Q. Okay. And under those circumstances, you
10 were trained to shoot and kill the dog?

11 A. If necessary.

12 Q. Okay. And sometimes it might not be
13 necessary?

14 A. Correct.

15 Q. Okay. And sometimes you could use a baton
16 or pepper spray instead?

17 A. A baton. Never said pepper spray.

18 Q. Okay. So just a baton.

19 Were you trained that you could maybe kick
20 the dog?

21 A. Yeah.

22 Q. No?

23 A. I said, "Yeah."

24 Q. Oh, you said yes. So you were trained
25 that you could use a baton or you could kick the dog?



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2 A. (The witness indicated nonverbally.)

3 Q. And was that part of your Human Society
4 training or something else?

5 A. I don't remember.

6 Q. Was that at the academy or something else?

7 A. Academy.

8 Q. And aside from the Humane Society
9 training, do you remember any other training about
10 dealing with dogs during your police duties?

11 A. I'm sorry. Say it one more time.

12 Q. Other than the Humane Society training,
13 when you were at the police academy, was there any
14 additional training about dog interactions?

15 A. Yes, aggressive dog, to be able to fire
16 upon an aggressive dog if need be.

17 Q. Was that part of your firearms training?

18 A. Correct.

19 Q. Okay. So you've got Humane Society
20 training dealing with dogs and you've got firearms
21 training relating to dogs. Is that accurate?

22 A. Correct.

23 Q. Anything else at the academy?

24 A. Not that I remember.

25 Q. Okay. Any training after the academy



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2 before this incident specifically relating to
3 interactions with dogs?

4 A. Not that I remember.

5 Q. So before this incident, the only training
6 that you had gotten about interacting with dogs was
7 the Humane Society training and the firearms training.
8 Is that fair to say?

9 MS. JONES: Objection to form.

10 A. That I remember, yes.

11 Q. And in the Humane Society training, did
12 they tell you that in certain circumstances you're
13 allowed to shoot a dog?

14 A. I do not remember.

15 Q. Tell me anything else you remember about
16 that Humane Society training.

17 A. I've stated it.

18 Q. So you've told me everything that you
19 remember about the Humane Society training?

20 A. That I remember from six years ago, five
21 years ago, correct.

22 Q. Okay. And since that time, five or six
23 years ago at the academy, have you gotten any other
24 training about safely interacting with dogs during
25 your police duties?



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2 A. No.

3 Q. So in the past six years, you've gotten no
4 training about interacting with dogs?

5 A. Correct.

6 Q. And as part of your training, would it be
7 accurate to say that you were never told that you
8 aren't allowed to shoot a dog?

9 A. I'm sorry?

10 Q. As part of your training, were you ever
11 told that you are not allowed to shoot a dog?

12 A. No.

13 Q. And as part of your training, were you
14 ever trained on the use of force continuum applied to
15 dogs?

16 A. Use of force continuum applied to dogs?

17 Q. Correct.

18 A. No.

19 Q. And at the academy, were you provided any
20 training about how to avoid shooting a dog?

21 A. I do not remember.

22 Q. So you don't remember any specific
23 training about situations that you might encounter a
24 dog and how to make sure you don't shoot the dog?

25 A. Well, not every encounter is a --



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2 Q. I understand what you meant, so I was just
3 switching to a different question.

4 A. But for the record, can we clarify it?

5 MS. JONES: Yes.

6 Q. I think the record gets -- sure. So at
7 the point when you pointed your gun at Mr. Dempsey,
8 the gun was already out; correct?

9 A. Correct.

10 Q. Because you had pulled it out when you
11 shot and killed Tesla; correct?

12 A. Correct.

13 Q. At the moment that you jumped the fence
14 from 49 Kosciusko Street into the backyard of 53
15 Kosciusko Street, you did not have any weapons in your
16 hands at that moment; correct?

17 A. Correct.

18 Q. You only pulled out your firearm after you
19 saw Tesla; correct?

20 MS. JONES: Objection.

21 A. After I saw Tesla charging, yes.

22 Q. And when you saw Tesla, you could have
23 instead pulled out your OC spray; correct?

24 MS. JONES: Objection.

25 A. I could have.



1 OFFICER JAVIER ALGARIN - BY MR. SHIELDS

2 Q. Did you also have a taser on you at the
3 time?

4 A. No.

5 Q. Okay. Did you also have a baton on you at
6 the time?

7 A. Yes.

8 Q. Did you have any other weapons on you at
9 the time?

10 A. No.

11 Q. So other options, in terms of weapons,
12 were only OC spray or a baton; correct?

13 A. Correct.

14 Q. Did you ever play baseball?

15 MS. JONES: Objection.

16 Maybe you can help us with where this is
17 going. It seems very far afield.

18 MR. SHIELDS: I think Officer Algarin
19 probably understands my question.

20 MS. JONES: Do you?

21 Q. Did you ever play baseball, Officer
22 Algarin?

23 MS. JONES: In his life?

24 Q. Okay. Yes. In your life, did you ever
25 play on a baseball team?



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2 MS. JONES: What's the relevance?

3 MR. SHIELDS: Okay. Just let me ask the
4 question, and then you'll get the relevance, okay,
5 instead of interrupting my deposition.

6 MS. JONES: I think we're struggling
7 with --

8 MR. SHIELDS: I think you're struggling,
9 and I think that you're speaking on the record, and
10 you need to let me ask my questions, unless you're
11 directing him not to answer.

12 MS. JONES: So we're struggling with
13 relevance here; right?

14 MR. SHIELDS: Okay. It's very relevant.

15 MS. JONES: You're talking about things in
16 his personal life. So if you can help us understand
17 how baseball is relevant, then I think --

18 MR. SHIELDS: Why don't you let me ask two
19 questions, and you'll get the relevance very quickly.

20 MS. JONES: Great. Ask them both at the
21 same time.

22 MR. SHIELDS: No. I'm going to ask one
23 question at a time so it's not a compound question.

24 Q. Please tell me, Officer Algarin, in your
25 life did you ever play baseball on a team?



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2 MS. JONES: Objection.

3 Q. You can answer.

4 MS. JONES: On a team?

5 Sure. Go ahead and answer.

6 A. Yes.

7 Q. Okay. And baseball requires you to swing
8 a bat at a fast-moving ball; correct?

9 MS. JONES: Objection.

10 A. Correct.

11 Q. Were you good at baseball?

12 A. I was okay.

13 Q. Did you play in high school?

14 MS. JONES: Objection.

15 A. Yes.

16 MS. JONES: I think we're --

17 Q. What was your batting average?

18 MS. JONES: Okay. We're not answering
19 this. Sorry.

20 I'm instructing you not to answer.

21 Q. And so you have to have some hand-eye
22 coordination to swing a bat and hit a ball; correct?

23 MS. JONES: Are you talking in general?

24 A. What was your question?

25 Q. You have to have pretty good hand-eye



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2 coordination in order to be able to swing the baseball
3 bat to hit the fast-moving baseball; correct?

4 MS. JONES: Objection.

5 A. Correct.

6 Q. That's the same hand-eye coordination that
7 you might need to swing a baton and hit a dog;
8 correct?

9 MS. JONES: Objection.

10 A. Correct.

11 Q. Does a baseball travel faster than a dog
12 running?

13 MS. JONES: Objection.

14 A. I don't --

15 Q. When you played baseball and you were
16 hitting, would the pitcher throw the ball faster than
17 Tesla was running at you?

18 MS. JONES: Objection.

19 A. No.

20 Q. Were you a young child when you played
21 baseball?

22 MS. JONES: You don't have to answer that.
23 Objection.

24 You don't have to answer that.

25 Q. How old were you when you played baseball?



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2 MS. JONES: Objection.

3 Don't answer that.

4 Elliot, really?

5 MR. SHIELDS: He gave an answer. He said
6 that the pitchers wouldn't throw the ball faster than
7 Tesla was running. At most, Tesla was running --

8 Q. Can you estimate for me, Officer Algarin,
9 how fast Tesla was running at you?

10 MS. JONES: That's relevant.

11 A. I'm sorry. We'll have to go back to your
12 question -- that question about Tesla and the
13 baseball. Can you please say that question one more
14 time? I may not have understood it.

15 Q. So my question now is: How fast would you
16 estimate Tesla was running at you?

17 A. Speed-wise?

18 Q. Correct, if you can estimate in miles per
19 hour.

20 A. I do not -- do not know.

21 Q. In miles per hour, would you estimate that
22 Tesla was running more slowly than a baseball gets
23 pitched?

24 A. Say that one more time.

25 Q. Let me withdraw that question. It was a



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2 bad question.

3 When you played baseball, how fast would
4 the pitchers pitch when you were batting?

5 MS. JONES: Objection.

6 A. 70, 80 miles per hour.

7 Q. And you would sometimes be able to hit a
8 baseball that was traveling at you at 70 to 80 miles
9 per hour. Is that fair to say?

10 A. Correct.

11 Q. And do you think in this circumstance you
12 would have been able to hit Tesla with your baton as
13 she ran at you?

14 A. No.

15 Q. And why do you think you wouldn't have
16 been able to hit Tesla with your baton, if you can hit
17 a baseball that's traveling 70, 80 miles an hour at
18 you?

19 A. Because the bat and baseball is in my hand
20 and ready to go, to swing, where the baton was not.

21 Q. And the gun was not in your hand either
22 when Tesla began to run at you; correct?

23 A. The gun was more accessible.

24 Q. Where is the baton on your person? Where
25 do you keep it or where did you keep it on that day?



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2 A. My left hip.

3 Q. Okay. And does it take longer to take
4 your baton out than your firearm?

5 A. Yes.

6 Q. Okay. And why?

7 A. With the baton, not only do I have to
8 reach across body to my left hip, I have to bring it
9 out. Not only bring it out, make sure it comes out
10 straight, because it gets snagged sometimes. It is
11 collapsible. So after you bring it out, it is only
12 about 10 inches close to a foot. You have to whip it
13 so it can spring out to full length and then afterward
14 be able to get into a position to use it.

15 Q. So you have an expandable baton?

16 A. Correct.

17 Q. And that takes a good amount of time,
18 because you pull it out and expand it before you can
19 use it?

20 A. More time than I had.

21 Q. And could you have kicked Tesla?

22 A. Could I have?

23 Q. Yes.

24 A. I could have.

25 Q. Do you work out?



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2 A. Sometimes.

3 Q. As part of your police training, are you
4 required to pass a physical fitness test?

5 A. Yes.

6 Q. And as part of your police duties, you've
7 testified that sometimes you have to chase suspects;
8 correct?

9 A. Yes.

10 Q. Sometimes you have to jump fences?

11 A. Yes.

12 Q. Sometimes you have to take large males
13 into custody that weigh more than you?

14 A. Yes.

15 Q. And sometimes you have to physically
16 restrain agitated large men. Is that fair to say?

17 A. Yes.

18 Q. It's the nature of police duties when you
19 make an arrest. Sometimes you have to use force
20 against people that you're taking into custody. Is
21 that fair to say?

22 MS. JONES: Objection.

23 A. Sometimes.

24 Q. And so would it be fair to say that
25 sometimes you take large men into custody that could



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2 also potentially cause you physical injuries; right?

3 MS. JONES: Objection.

4 A. Yes.

5 Q. And you do that without shooting them;
6 right?

7 MS. JONES: Objection.

8 A. Are we talking armed people, unarmed
9 people? We have to be a little more specific.

10 Q. Sure. Let's say unarmed people.

11 A. Uh-huh. It also depends on the
12 officer-to-subject factors.

13 Q. Let's say there's an unarmed man that's
14 larger than you running at you and he's unarmed.

15 A. Okay.

16 Q. Would you be justified in shooting that
17 person?

18 A. Again, officer-to-subject circumstances.

19 Q. What other factors would you need to know
20 to know if you could shoot an unarmed person that was
21 running at you?

22 A. Size. Relevance to my size. Larger --
23 that's very broad -- how much larger. Is he athletic?
24 Is he muscular? Is he huge? Does he look like he
25 could bench press 500 pounds? Does he look like he



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2 can overpower me if he gets to me and my gun? Does it
3 look like, if I wrestle him, will he overpower me and
4 take my gun? Does he have any martial arts skills?
5 Does he have any fighting skills? Does his skills
6 exceed my own? Will he be able to wrestle me until
7 the point I cannot reach my gun? Is he going to put
8 me in a choke hold? Those kind of subject factors.

9 Q. And so those are all specific factors
10 where your life could potentially be in danger;
11 correct?

12 A. Those are factors to consider when using
13 use of force.

14 Q. Considering the deadly -- the use of
15 deadly force; correct?

16 A. Correct.

17 Q. And in this circumstance, was Tesla larger
18 than you?

19 A. No.

20 Q. And could Tesla have taken your gun
21 potentially?

22 A. No.

23 Q. Could Tesla have been a threat to your
24 life?

25 A. Yes.



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2 Q. Have you ever heard that in the entire
3 history of policing in the United States that no
4 officer has ever been killed during an attack by a
5 dog?

6 A. I don't know about officers. I know of
7 people who have been killed or seriously injured by
8 dogs.

9 Q. So you've never specifically heard that no
10 police officer in the history of the United States has
11 ever been killed during police duties by a dog?

12 MS. JONES: Objection.

13 A. Not that I know of.

14 Q. That's not something that you learned in
15 your training?

16 A. No.

17 Q. And police officers generally have more
18 training on interacting with people in dangerous
19 situations than normal civilians; correct?

20 MS. JONES: Objection.

21 A. Yes.

22 Q. That's the nature of police work? Yes?

23 A. Was that a question?

24 Q. Yes.

25 A. Is it the nature of police work?



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2 Q. The nature of police work is that
3 sometimes you have to interact with the public and
4 sometimes those people are agitated?

5 A. Yes.

6 Q. How could you have done things differently
7 to avoid shooting and killing Tesla?

8 MS. JONES: Objection.

9 A. I could have knocked on the door.

10 Q. And you had the time -- you had the time
11 that you could have done that; right?

12 A. Yes.

13 Q. Because there was no emergency in his
14 backyard that required you to jump the fence?

15 MS. JONES: Objection.

16 A. I had time.

17 Q. So the answer is, yes, there was no
18 emergency, so you had time to walk to his front
19 door --

20 MS. JONES: Objection.

21 Q. -- and ask for his permission to enter his
22 yard; correct?

23 MS. JONES: Objection.

24 A. Yes.

25 Q. What else could you have done?



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2 MS. JONES: Objection.

3 A. That's it.

4 Q. Could you have announced "Police entering
5 your property" or something similar prior to jumping
6 his fence to warn him that you were entering his yard?

7 MS. JONES: Objection.

8 A. Could I have yelled and just yelled that
9 I'm entering your yard?

10 Q. Yes.

11 A. In a backyard full of houses?

12 Q. Correct.

13 A. Sure.

14 Q. Or providing some other sort of warning
15 before entering his property?

16 A. Sure.

17 Q. And could you have used pepper spray on
18 Tesla?

19 A. I don't believe it's effective.

20 Q. Why do you believe that pepper spray is
21 not effective on dogs?

22 A. Because I don't believe OC will be
23 effective on dogs.

24 Q. Is OC effective on people?

25 A. Yes, sometimes.



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2 Q. Have you ever been trained that OC is not
3 effective on dogs?

4 A. No.

5 Q. So no one has ever told you that OC spray
6 is ineffective on dogs?

7 A. No.

8 Q. So that's just your personal belief?

9 A. Yes.

10 Q. Have you ever tried to use OC -- withdraw
11 that.

12 Have you ever tried to use OC spray on a
13 dog?

14 A. No.

15 Q. And maybe we covered this before, could
16 you have tried to kick Tesla?

17 A. Could I have tried?

18 Q. Yes.

19 A. Yes and no. I could have tried to kick
20 Tesla, but that kick could have just given Tesla my
21 leg to bite me.

22 Q. Have you ever been bitten by a dog before
23 while you were working as a police officer?

24 A. No.

25 Q. Were you ever trained any time about using



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2 any sort of less lethal force against dogs?

3 A. Baton.

4 Q. Other than the baton?

5 A. And the OC spray, I believe, from what I
6 can remember.

7 Q. So you were trained on using OC spray?

8 A. I don't necessarily remember specifically.

9 Q. You might have been trained on OC spray,
10 but you don't remember?

11 A. Exactly.

12 Q. Okay. And do you know why you would have
13 been trained to use OC spray against a dog?

14 A. It may have been effective for some dogs,
15 like it is for some people.

16 Q. So you would have been trained -- you
17 wouldn't be trained on something that's not effective;
18 right?

19 A. OC spray is sometimes not effective.

20 Q. Against people?

21 A. Yes.

22 Q. But you don't remember anything about the
23 training for when it may or may not be effective
24 against a dog. Is that fair to say?

25 A. Yes.



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2 Q. So, basically, you have a vague
3 recollection of maybe being told that OC spray could
4 work in some circumstances against a dog?

5 MS. JONES: Objection.

6 A. Yes.

7 Q. And that was at the academy, you said?

8 A. Yes.

9 Q. And would you agree that if there's more
10 than one choice that you can make, it's always best to
11 make the safest choice?

12 MS. JONES: Objection.

13 A. Again, it depends on the situation. I
14 don't know.

15 Q. If you could turn back time and do it all
16 over again, would you do anything different in this
17 incident?

18 MS. JONES: Objection.

19 A. I definitely don't wish I had to shoot
20 anything.

21 Q. Okay. I appreciate that, but that wasn't
22 my question. My question was if you could turn back
23 time and do it all over again, would you do anything
24 different?

25 MS. JONES: Objection.



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2 A. Yeah, I would go to Charles Dempsey and
3 let him know that I'm in his backyard.

4 Q. You would go and you would seek his
5 consent prior to entering his backyard. Is that what
6 you mean?

7 A. Yes.

8 Q. You would have walked to his front door
9 and knocked on his front door?

10 MS. JONES: Objection.

11 A. Yes.

12 Q. And you would have done that because there
13 was no emergency requiring you to jump his fence
14 immediately into his yard instead of going to his door
15 and knocking and asking for his consent.

16 MS. JONES: Objection.

17 Q. Is that fair?

18 MS. JONES: Objection.

19 A. Yes.

20 Q. After this incident, did you draft an
21 incident report?

22 A. No.

23 Q. After this incident, did you make any
24 written notes about the incident?

25 A. I don't remember.



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2 Q. If you made written notes about the
3 incident, would they have been handwritten notes?

4 MS. JONES: Objection.

5 A. I don't remember.

6 Q. At the time of the incident, if you were
7 to make notes, would it have been handwritten or on
8 some electronic device?

9 MS. JONES: Objection.

10 A. It depends on the notes.

11 Q. If you're making notes as an officer -- do
12 you carry around, like, a spiral notepad with you?

13 A. Yes.

14 Q. Do you take notes in that spiral notepad?

15 A. Yes.

16 Q. Do you -- are there any rules about taking
17 notes in your spiral notepad?

18 A. No.

19 Q. You're not required to put certain things
20 in your notes every day?

21 A. No.

22 Q. There's no rule from RPD requiring you to
23 write certain things down in your notepad?

24 A. No.

25 Q. How about any other -- are there any --



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